

APPEAL NO. 021574  
FILED AUGUST 7, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 17, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable low back injury in the form of an occupational disease due to repetitious, physically traumatic activities that arose out of and in the course and scope of employment with the employer with a date of injury of \_\_\_\_\_; that, if the claimant had sustained a compensable \_\_\_\_\_, injury, the respondent (carrier) would be relieved from liability under Section 409.002 because of the claimant's failure to timely report the claimed injury; that the carrier would also be relieved from liability under Section 409.004 because of the claimant's failure to timely file a claim with the Texas Workers' Compensation Commission (Commission); that the claimant did not have disability as a result of the claimed \_\_\_\_\_, because he did not sustain a compensable injury; and that the claimant's compensable cervical spine injury of \_\_\_\_\_, did not extend to and include a low back injury. The claimant appealed, arguing that the hearing officer's determinations are against the great weight and preponderance of the evidence. The carrier responded urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable repetitive trauma injury with a date of injury of \_\_\_\_\_. The claimant asserts that he sustained injury to his low back as a result of the repetitive heavy lifting he performed at work. The question of whether the claimant sustained the alleged injury was a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 000074, decided February 25, 2000. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer was not persuaded that the testimony and evidence presented by the claimant was sufficient to satisfy the claimant's burden of proving that he was injured as a result of performing repetitive physically traumatic activities at work. The hearing officer was acting within his province as the trier of fact in so finding. Our review of the record does not reveal that the hearing officer's injury determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Because we have affirmed the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm his determination that the claimant did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

The hearing officer also did not err in determining that the carrier would be relieved of liability had the claimant sustained a compensable injury on \_\_\_\_\_, because he neither timely reported the alleged injury nor timely filed a claim with the Commission. Conflicting evidence was presented on both issues and the hearing officer was acting within his province as the fact finder in resolving those conflicts against the claimant. Our review of the record does not reveal that the notice and timely claim determinations are so against the great weight of the evidence as to compel their reversal on appeal. Cain, supra.

Finally, the hearing officer did not err in determining that the claimant's compensable cervical spine injury of \_\_\_\_\_, does not extend to or include a low back injury. That issue presented a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Nothing in our review of the record demonstrates that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb that determination on appeal. Cain, supra.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE, a division of ZURICH NORTH AMERICA** and the name and address of its registered agent for service of process is

**GARY SUDOL  
ZURICH NORTH AMERICA  
12222 MERIT DRIVE  
DALLAS, TEXAS 75251.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge